

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

Robbin Shea Brown,

Petitioner,

v.

S. Lake,

Respondent.

No. CV-15-00328-TUC-FRZ

ORDER

Before the Court for consideration is the Report and Recommendation of the Magistrate Judge, recommending that the Petition Under 28 U.S.C. § 2241 for a Writ of Habeas Corpus filed by Petitioner Robbin Shea Brown *pro se* – in which Petitioner challenges three separate disciplinary proceedings – be denied on the merits.

This matter was referred to the Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b); Rule 72 of the Federal Rules of Civil Procedure; and LRCiv 72.1 and 72.2 of the Rules of Practice of the United States District Court for the District of Arizona, for further proceedings and Report and Recommendation.

Magistrate Judge Leslie Ann Bowman issued her Report and Recommendation (Doc. 18), recommending that the District Court, after its independent review of the record, enter an order denying the petition for writ of habeas corpus based on the merits of the claims.

The Respondent filed an answer arguing that the petition should be dismissed for

1 failure to exhaust administrative remedies; and in the alternative, all claims should be
2 denied on the merits.

3 The Report and Recommendation includes a thorough analysis on the merits of the
4 claims raised; the failure to exhaust administrative remedies issue was not addressed.

5 The Petitioner filed objections to the Report and Recommendation, requesting this
6 Court “set aside the Magistrate’s Report and Recommendation, and grant Petitioner’s
7 motion on its merits by the expunging of all incident reports involved.” Respondent file a
8 response in opposition thereto.

9 Upon consideration of the petition for writ of habeas corpus, Respondent’s answer
10 and Petitioner’s reply, the Report and Recommendation of the Magistrate Judge,
11 Petitioner’s objections and the Respondent’s response thereto, the Court finds, having
12 made a full and independent review under 28 U.S.C. § 636(b)(1)(C), that the petition
13 shall be denied on the merits.

14 Before Petitioner can appeal this Court’s judgment, a certificate of appealability
15 must issue. See 28 U.S.C. § 2254(c); Fed.R.App.P. 22(b)(1). A certificate may issue
16 “only if the applicant has made a substantial showing of the denial of a constitutional
17 right.” 28 U.S.C. § 2253(c)(3). A substantial showing is made if “reasonable jurists
18 could debate whether . . . the petition should have been resolved in a different manner,”
19 or if “the issues presented were adequate to deserve encouragement to proceed further.”
20 *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation omitted).

21 Upon review of the record – in light of the standards for granting a certificate of
22 appealability – the Court concludes that a certificate shall not issue; as the resolution of
23 the petition is not debatable among reasonable jurists and does not deserve further
24 proceedings. Accordingly,

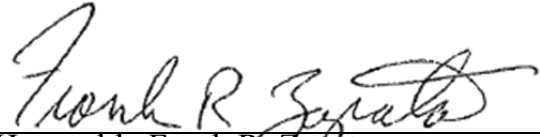
25 IT IS ORDERED that the Report and Recommendation (Doc. 18) is hereby
26 accepted and adopted as the findings of fact and conclusions of law of this Court;

27 IT IS FURTHER ORDERED that the Petition Under 28 U.S.C. § 2241 for a Writ
28 of Habeas Corpus (Doc. 1) is denied;

1 IT IS FURTHER ORDERED that this case is dismissed; the Clerk of Court is
2 directed to enter judgment according;

3 IT IS FURTHER ORDERED a certificate of appealability shall not issue.
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5 Dated this 31st day of August, 2016.

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8 Honorable Frank R. Zapata
9 Senior United States District Judge
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